

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PETER KIEWIT SONS', INC.,

Plaintiff,

vs.

KIEWIT CONSTRUCTION, L.L.C., and
MICHAEL ALLEN HENDRICKSEN,

Defendants.

8:21CV372

ORDER

THIS MATTER is before the Court on the Motion for Preliminary Injunction filed by Plaintiff Peter Kiewit Sons', Inc., Filing No. 2. At the hearing held on October 14, 2021 at 1:30 p.m., Plaintiff appeared through counsel, Michael F. Coyle. The defendant failed to appear despite being contacted by the Court and plaintiff's counsel.

The Court, being fully advised in the premises, finds that Plaintiff has demonstrated that it is entitled to a preliminary injunction under the test set forth in *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc). Specifically, Plaintiff has shown that it is likely to succeed on the merits of each of its claims under the Lanham Act, also known as the Trademark Act of 1946, 15 U.S.C. §1051 et seq., and, consequently, is entitled to a statutory presumption of irreparable harm, under 15 U.S.C. § 1116(a). Further, the balance of equities weighs in Plaintiff's favor, as the evidence shows Defendants have previously agreed to cease their use of the "KIEWIT CONSTRUCTION" mark. Finally, the public interest is served by preventing confusion to the public, which Plaintiff has shown to exist by evidence, and the fact that this Order does not prevent Defendants from continuing to do business under another mark. Accordingly, Plaintiff's Motion for Preliminary Injunction is granted.

IT IS ORDERED:

1. A Preliminary Injunction Order is issued effective immediately to enjoin Kiewit Construction, L.L.C. and Michael Allen Hendrickson, their agents, servants, employees and all those in active concert and participation with Defendants to refrain from:

- a. Using the "KIEWIT CONSTRUCTION" mark, or any other mark confusingly similar to the service mark "Kiewit" ("Kiewit Mark").
- b. Making any representations which are suggestive that Defendants have, or had, some association with Kiewit or approval or authorization from Kiewit to use the Kiewit Mark in any capacity, including but not limited to their use of the "KIEWIT CONSTRUCTION" mark.
- c. Otherwise engaging in any further acts of unfair competition, infringement, and/or dilution of the Kiewit Mark.

2. Pursuant to 15 U.S.C. § 1116(a), Defendants are directed to file with the Court and serve on Kiewit within thirty days after the service on Defendants of this Order a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction. Compliance with this requirement shall be satisfied upon evidence of the following:

- a. Defendants cause the name of Kiewit Construction, L.L.C. to be changed with the South Dakota Secretary of State in accordance with the requirements of this Preliminary Injunction Order; and

- b. Defendants send a letter to all current and former customers and vendors informing them of Kiewit Construction, L.L.C.'s new name and affirmatively stating that Defendants do not now and never have had any affiliation with Plaintiff or any of Plaintiff's subsidiaries, agents, or employees.

3. The Clerk of Court shall send a copy of this Order to defendant Michael Allen Hendricksen at 1112 S. Main Avenue, Sioux Falls, SD 57105 and to defendant Kiewit Construction, L.L.C. at c/o Megan Ann Pospiscil, Registered Agent, 3109 S. Phillips Avenue, Sioux Falls, SD 57105.

4. Bond is set in the amount of \$100.00. The Bond previously posted by Plaintiff for the Temporary Restraining Order, Filing No. 16, shall be carried over to satisfy this bond.

Dated this 15th day of October, 2021.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge